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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

IN RE: INCRETIN MIMETICS
PRODUCTS LIABILITY
LITIGATION

Case No. 13-md-2452-AJB-MDD

As to all related and member cases

**PLAINTIFFS' (PROPOSED) ORDER
TO ELI LILLY GOVERNING
PROCEDURES FOR PRODUCTION
OF ELECTRONICALLY STORED
INFORMATION**

This order relates to the production of documents and supplements all other discovery rules and orders as between defendant Eli Lilly and Company (“Lilly”), and all plaintiffs in this litigation. It streamlines Electronically Stored Information (“ESI”) production to promote a “just, speedy, and inexpensive determination” of this action, as required by the Federal Rules of Civil Procedure.

A. Format of Production

1. The Parties shall produce electronic documents in a single-paged Tagged Image File format (“TIFF”) with extracted text with an accompanying load

1 file to indicate the location and unitization of the TIFF files. The Parties will
2 also produce hard copy documents in single-paged Tagged Image File
3 format (“TIFF”).

4 2. Each page of a produced document shall have a legible, unique page
5 identifier (“Bates Number”), and confidentiality legend (where applicable),
6 on the face of the image at a location that does not interfere with the
7 information from the source document.

8 3. To the extent possible, Lilly will provide the following metadata fields:

- 9 a. Beginning bates number
- 10 b. Ending bates number
- 11 c. Beginning attachment number
- 12 d. Ending attachment number
- 13 e. Attachment count (email)
- 14 f. Attachment name (email)
- 15 g. Custodian/Source
- 16 h. Author/From
- 17 i. Document type
- 18 j. Subject
- 19 k. Recipient
- 20 l. CC
- 21 m. BCC
- 22 n. Sent date
- 23 o. Received date
- 24 p. Create date
- 25 q. Last modified date
- 26 r. DocExt
- 27 s. File name
- 28 t. File path

1 u. Native file link

2 v. Text path

3 w. Importance

4 x. File size

5 y. Page count

6 z. Redacted

7 This list of fields does not create any obligation to create or manually code fields that
8 are not automatically generated by the processing of the ESI, that do not exist as part
9 of the original metadata of the document, or that would be burdensome or costly to
10 obtain. The Custodian/Source metadata field shall be provided for all documents
11 produced.

- 12 4. In scanning paper documents, distinct documents shall not be merged into a
13 single record, and single documents shall not be split into multiple records
14 (*i.e.*, paper documents should be logically unitized). Parent-child
15 relationships (the association between an attachment and its parent
16 document) shall be preserved. Original document orientation shall be
17 maintained (*i.e.*, portrait to portrait and landscape to landscape).
- 18 5. Excel spreadsheets that do not require redaction shall be produced in native
19 format. PowerPoint presentations that do not require redaction may be
20 produced in native format or in TIFF. Any document produced in native
21 will have a corresponding place holder TIFF image for these records bearing
22 the legend “This document produced in native file format only.” Prior to the
23 production of native documents, the Parties will reach agreement on the
24 format and use of such native documents. Other document formats that
25 present imaging problems shall promptly be identified, and the Parties shall
26 meet and confer to attempt to resolve the problems.
- 27 6. The mere production of ESI in this litigation as part of a larger production
28 shall not itself constitute a waiver for any purpose.

- 1 7. Pursuant to Federal Rule of Evidence 502(d) and the governing Protective
2 Order in this case, the production of a privileged or work product protected
3 document is not a waiver in the pending case or in any other federal or state
4 proceeding.
- 5 8. The Parties are not required to produce exact duplicates of electronic
6 documents stored in different locations. Lilly may globally de-duplicate
7 identical ESI, which will be determined as follows:
- 8 (i) Electronic files will be de-duplicated based upon calculated SHA1 values
9 for binary file content. File contents only will be used for SHA1 value
10 calculation and will not include operating system metadata (filename, file
11 dates) values.
- 12 (ii) Messaging files will be de-duplicated based upon SHA 1 values for the
13 message family, including parent object and attachments. The following
14 fields will be used to create the unique value for each message: BCC;
15 CC; To; Date Sent; From; Subject; Attachment Count; total Attachment
16 Size. Messaging materials will be de-duplicated at a family level,
17 including message and attachment(s).
- 18 If Lilly de-duplicates identical ESI, Lilly shall provide custodian
19 associations in a semi-colon delimited overlay file that includes duplicate
20 custodian name information and related source file paths for the duplicate
21 custodians. The overlay files shall be produced after every production and shall
22 be regularly updated to account for rolling productions. The parties shall
23 produce documents on CD, DVD, or hard drives.
- 24 9. No party has an obligation to make its production text-searchable; however,
25 if a party's documents exist in text-searchable format, then such documents
26 shall be produced in a text-searchable format at no cost to the receiving
27 party.

- 1 10. For each document containing searchable text, a single text file shall be
2 provided along with the image files and metadata. The text file name shall
3 be the same as the Bates number of the first page of the document. File
4 names shall not have any special characters or embedded spaces. Electronic
5 text must be extracted directly from the native electronic file unless the
6 document was redacted, an image file, or a hard copy document. Subject to
7 paragraph B.9, in these instances, a text file shall be created using OCR and
8 shall be produced in lieu of extracted text.
- 9 11. Absent a showing of good cause, no party need restore any form of media
10 upon which backup data is maintained in a party's normal or allowed
11 processes, including but not limited to backup tapes, disks, SAN, and other
12 form of media, to comply with its discovery obligations in the present case.
13 It will be presumed, although either party may seek to rebut that
14 presumption, that costs for production from a backup or archive, to the
15 extent it is deemed necessary, will be paid by the party making the request.
- 16 12. Absent a showing of good cause, non-transcribed voicemails, and PDAs are
17 deemed not reasonably accessible and need not be collected and preserved.
- 18 13. When processing ESI, EST shall be selected as the time zone.
- 19 14. Objects embedded in Microsoft Word and .RTF files will be extracted as
20 separate documents and produced as attachments to the document.
- 21 15. Compression file types (i.e., .CAB, .GZ, .TAR, .Z, .ZIP) shall be
22 decompressed in a reiterative manner to ensure that a zip within a zip is
23 decompressed into the lowest possible compression resulting in individual
24 folders and/or files.
- 25 16. Audio files and video files shall be produced in native format with the
26 source file path provided.
- 27 17. Any documents that are replaced in later productions shall be clearly
28 designated as such, by appending an " R" to the production prefix. When a

1 party produces a replacement production indicated by “R,” the receiving
2 party must discard or return to the producing party all copies, including
3 working copies, of the original, replaced image.

4 18. Any native files that are produced shall be produced with the source file
5 path provided, as well as all extracted text and applicable metadata fields set
6 forth in this order.

7 19. Documents with dynamic fields for file names, dates, and times will be
8 processed to show the field code (e.g., “[FILENAME]” or
9 “[AUTODATE]”), rather than the values for such fields existing at the time
10 the file is processed.

11 20. The Parties will meet and confer, as necessary, regarding potentially
12 relevant structured data sources.

13 B. Production of Custodial Files

- 14 1. Upon agreement of the parties, Lilly shall identify up to eight custodians,
15 keeping in view the pleaded claims and defenses in this litigation, to Plaintiffs’
16 counsel. Lilly shall begin producing responsive, non-privileged, reasonably
17 accessible documents, on a rolling basis, from the custodial files of these
18 custodians. Upon the substantial completion of the production of these
19 custodial files, the Parties shall meet and confer concerning the production of
20 additional custodial files. This paragraph does not relieve Lilly from its
21 obligation to produce documents otherwise responsive to Plaintiff’s production
22 requests made in, or applicable to, this MDL, subject to Lilly’s objections and
23 meet and confers between the parties.
- 24 2. Lilly will use search terms, identified in Appendices A respectively, to cull
25 collected electronic data from 1999 to June 1, 2013. Lilly will notify Plaintiffs
26 when the production of a custodial file is substantially complete. Upon
27 substantial completion of the production of the custodial files of the above-
28 referenced custodians, the parties will meet and confer regarding the production

1 of additional custodial files, if any. As necessary, the parties will meet and
2 confer with respect to the process by which supplemental custodial file
3 productions will be made, subject to agreement of the parties.

4 3. If Plaintiffs elect to take the deposition of a custodian prior to receiving notice
5 that the production of the custodian's documents is substantially complete,
6 Plaintiffs will not be entitled to further depose that witness on the grounds that
7 the document production was not complete.

8 4. This order supersedes all pending or previously served instructions pursuant to
9 Requests for Production directed to Lilly, and governs all pending or future
10 instructions accompanying Requests for Production, Requests for Admission,
11 Interrogatories, and deposition notices directed to Lilly.

12 C. Technical Specifications

13 1. All TIFF-formatted documents will be single page, Group 4 TIFF at 300 x 300
14 dpi resolution and 8.5 x 11 inch page size, except for documents that in the
15 producing party's reasonable judgment require a different resolution or page
16 size. If a color image is produced in black and white, the receiving party may
17 request the producing party to produce the original, color image. After
18 receiving such a request for color production, the parties will meet and confer
19 on a reasonable and cost-effective means of providing the requested documents.

20 2. There will be two Load/Unitization files accompanying all productions. One
21 will be the Image load file and the other will be the Metadata load file.

22 3. Specifications for the image load files will be the following:

23 (i) Every Document referenced in a production image load file shall
24 have all corresponding images, text, and data logically grouped
25 together in a directory structure with a common key to properly
26 load the data.

27 (ii) Documents shall be produced in only one image load file
28 throughout the productions, unless that document is noted as being

a replacement document in the Replacement field of the data load file.

- (iii) The name of the image load file shall mirror the name of the delivery volume, and should have an .lfp, .opt or .dii* extension (e.g., ABC001.lfp). The volume names shall be consecutive (i.e., ABC001, ABC002, et. seq.). If a .dii file is produced, the accompanying metadata load file shall be separate from the .dii file and not contained within the .dii file.
- (iv) The load file shall contain one row per TIFF image.
- (v) Every image in the delivery volume shall be contained in the image load file.
- (vi) The image key shall be named the same as the Bates number of the page. Load files shall not span across media (e.g., CDs, DVDs, Hard Drives, etc.), i.e., a separate volume shall be created for each piece of media delivered.

4. Specifications for the metadata load files will be the following:

- (i) The metadata load file shall use the following delimiters:
 - Column Delimiter: Pipe - | (ASCII 124) or (ASCII 020)
 - Text Qualifier: Caret - ^ (ASCII 94) or ¨ (ASCII 254)
 - New line: Registered sign - ® (ASCII 174)
 - Example: ¨PRODBEG¨¨PRODEND¨¨PRODBEGATT¨
- (ii) Data for documents shall be produced in only one data load file throughout the productions, unless that document is noted as being a replacement document in the Replacement field of the data load file.
- (iii) The first record shall contain the field names in the order of the data set forth in the Metadata.

- 1 (iv) All date fields shall be produced in “mm/dd/yyyy hh:mm:ss AM”
2 format.
- 3 (v) A carriage-return line-feed shall be used to indicate the start of the
4 next record.
- 5 (vi) Load files shall not span across media (e.g., CDs, DVDs, Hard
6 Drives, etc.); a separate volume shall be created for each piece of
7 media delivered.
- 8 (vii) The name of the metadata load file shall mirror the name of the
9 delivery volume, and shall have a .dat, .csv or .txt extension (i.e.,
10 ABC001.dat).
- 11 (viii) The volume names shall be consecutive for each produced source.
12 (i.e., ABC001, ABC002, et. seq.).

13 D. Costs

14 While each party expressly reserves its rights to seek costs relating to this
15 litigation, including the costs of producing documents, initially each party will bear
16 the costs to process and review its own documents and readily accessible ESI. To the
17 extent any party requests data that is not readily accessible, subject to Paragraph C.11,
18 the parties shall comply with the Federal Rules of Civil Procedure in determining
19 whether the inaccessible data is to be produced, including the costs to process or
20 review unique or non-standard data. The parties shall confer concerning inaccessible
21 material, including inaccessible ESI, prior to seeking the Court’s assistance.

22 E. Protective Order

23 All documents that have been or will be produced by the parties will be subject
24 to the terms of the Protective Order entered in this litigation.

25 F. Predictive Coding

26 The parties agree that Lilly may, but is not required to, use predictive
27 coding in connection with the review of documents in this litigation.

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IT IS SO ORDERED.

DATED: _____

Honorable Mitchell D. Dembin
United States Magistrate Judge